

## **BACK ON TRACK: BACKGROUND ON THE PROGRAM AND CURRENT ISSUES**

### **THE PROGRAM**

*Back On Track* is a reentry initiative for young adults who have committed first-time, low-level, non-violent drug sales offenses. San Francisco District Attorney Kamala D. Harris created *Back On Track* based on the recognition that these offenders are likely to cycle in and out of the criminal justice system at great cost to both communities and local and state budgets. 54% of drug offenders commit new crimes within two years of serving their sentence and it costs the public over \$50,000 to return just one drug offender to San Francisco county jail for a year.

To be eligible for *Back on Track*, defendants cannot have any history of violence, guns or gang involvement. The program starts in court when a defendant is given a choice to join *Back On Track* or stand trial. If a defendant chooses *Back On Track*, to get into the program s/he must plead guilty and perform up to 200 hours of community service. Formal sentencing is then deferred for 12 months while s/he completes a Personal Responsibility Plan that mandates concrete goals to be completed, such as getting a G.E.D. or finishing high school, securing or maintaining full-time employment, completing parenting classes, and paying child support obligations.

### **ROLE OF THE SUPERIOR COURT IN BACK ON TRACK**

The SF Superior Court's participation is essential to the success of this initiative. The central role of the court is to ensure accountability on the part of the participant. Without accountability the program cannot function effectively. The integrity of the program is at risk if participants are not held to the negotiated agreement they made when entering the program.

The court tracks accountability in a number of ways, including:

- reviewing case-management prepared court reports and participating in case discussions prior to court;
- direct engagement with the participants;
- ongoing judicial monitoring of participants' progress in the areas necessary for graduation;
- encouraging compliance;
- admonishing poor performance;
- rewarding or sanctioning conduct;
- maintaining BOT court standards and processes that ensures consistent, effective and efficient handling of all BOT cases;
- ensuring district attorney and public defender conform all conduct to legal and ethical obligation;

- granting sanctions and termination requests for continuous non-compliance or a new arrest.

## BACK ON TRACK TERMINATION CRITERIA

Any of the following are cause for termination from the Back on Track program:

1. **Recidivism** – Any new arrest or charge (e.g. felony, misdemeanor, DUI);
2. **Noncompliance** – Failure to consistently comply with all BOT requirements including, but not limited to attending weekly check-ins with designated Criminal Justice Specialists, accomplishing agreed upon goals outlined in Personal Responsibility Plan, attending mandatory meetings;
3. **Self-Termination** – Voluntary withdrawal from program;
4. **Inappropriate Behavior** – Being disrespectful or rude to BOT staff, judges, and court. Threats of any kind made by a BOT participant to anyone affiliated with the program (e.g. other participants, staff, lawyer, judge);
5. **Falsification of Documents** – Submitting false records to the Criminal Justice Specialists or the court (e.g. community service hours, employment or education documentation).

## TERMINATION PROCEEDINGS

Terminations based on continued non compliance or new arrests are based on the reports Goodwill case managers generate to track participant performance, the recommendation of the district attorney who has reviewed the case extensively with the relevant case manager, and the Court's own first hand knowledge of the participant's behavior.

The Court's knowledge of participants' status is based on past court reports and information presented by the district attorney. All Back on Track court reports are presented on the record, where both defendant and Public defender have an opportunity to challenge the facts and recommendations.

Facts pertinent to terminations are those related to the goals each participant must meet in order to graduate from the program. These include, but are not limited to the following

- consistent in person and phone check ins;
- completion or active efforts toward completion of community service hours;
- enrollment and regular attendance in a high school, GED course or higher education course;
- attendance at job training and workshop development courses;
- regular meetings with a Goodwill employment specialist;
- sustainable employment and /or demonstrable attempts at gaining employment;

- completion of personal responsibility goals;
- attendance at mandatory meetings;
- no new arrest.

## **CURRENT CHALLENGES WITH TERMINATION PROCEEDINGS**

When the district attorney requests termination for a participant, it is the policy of the Public Defender's office to notify the attorney of record to represent the participant at the hearing. This frequently results in an appearance by the public defender of record who may have met the participant only once, and months ago, at arraignment. Under this arrangement, the public defender often arrives in court with little or no background on the performance of the participant. The public defender often requests discovery in excess of what is required to make a termination decision and is often unnecessary to the proceedings at hand. This causes delays while he/she investigates the case and tries to persuade the court and the district attorney that the participant is worthy of retaining in the program. This has been a challenge to effective termination proceedings.

A second complication arises after the Court in Department 206 terminates the participant from Back on Track and sends him/her back to the original preliminary hearing department for sentencing. At this juncture it is not unusual for the assigned public defender to challenge the termination order and request that the matter be sent back to 206 for a "termination hearing." The preliminary hearing judge then puts the matter on calendar in department 206, which creates confusion and frustration. Recently, the Presiding Judge explained to the assigned public defender that a termination order had been made and that a Motion for Reconsideration must be filed with the appropriate judge.

## **PROPOSAL FOR EFFECTIVE AND EFFICIENT TERMINATION DECISIONS IN DEPARTMENT 206**

1. There is no right to appeal termination from Back on Track at sentencing. These decisions are made in Back on Track court.
2. The public defender regularly staffing BOT in department 206 would assume representation for participant throughout the Back on Track program, including termination decisions. This would streamline the process of making termination decision. The public defender has first hand knowledge of the participant's record and court reports and a continuing relationship with case managers. This change would also benefit the participant by giving the public defender a stake in encouraging participant compliance.
3. Terminations decisions would be made on the basis of court reports. Both the court and public defender have an opportunity to review a participant's progress on a regular basis. The court reports are discussed in depth in our pre conference meeting where arguments can be made on behalf of the participant and are reviewed in open court.
4. The Presiding Judge would communicate this policy to the bench.

## **ROLE OF DISTRICT ATTORNEY**

The role of the Back on Track district attorney is as follows:

- Adhere to ethical and legal code of conduct.
- Maintain professional and respectful attitude toward court, public defender, court staff and BOT participants.
- Support the authority and integrity of the court.
- Review Goodwill's court reports for accuracy of information.
- Discuss all court reports in case conferencing.
- Be knowledgeable with respect to BOT participants appearing before the court.
- Request sanctions and termination for non compliance.